

Garcia Benitez v. Mukasey, 04-74146

MAR 13 2008

PREGERSON, Circuit Judge, concurring in part and dissenting in part:

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

I concur with respect to *Garcia Benitez*. I dissent, however, with respect to *Cortes*. *Garcia Benitez* and *Cortes* have a six year-old daughter, *Carla Joanna Garcia*, who is a United States citizen. When a parent is denied cancellation of removal, the government effectively deports the United States-born children of that parent. This unconscionable result violates due process by forcing children either to suffer de facto expulsion from the country of their birth or forego their constitutionally-protected right to remain in this country with their family intact. *See, e.g., Moore v. City of East Cleveland*, 431 U.S. 494, 503-05 (1977) (“Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this nation's history and tradition.”); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (recognizing that “[t]he integrity of the family unit has found protection in the Due Process Clause of the 14th Amendment”).

Furthermore, as a nation we should recognize that many who came here illegally and many children born of illegal immigrants serve and have served with honor and distinction in our military forces, and many have laid down their lives on the altar of freedom.

As I have said before, “I pray that soon the good men and women in our

Congress will ameliorate the plight of families like the [petitioner's] and give us humane laws that will not cause the disintegration of such families.”

Cabrera-Alvarez v. Gonzales, 423 F.3d 1006, 1015 (9th Cir. 2005).